

JAMES F. CARPENTER
Claimant

STATE OF KANSAS

AND

STATE SELF INSURANCE FUND

Docket No. 1,014,798

Respondent argues the preliminary hearing Order should be affirmed as the Kansas Workers Compensation Act, K.S.A. 44-501 et seq., does not compel an employer to provide transportation to and from the workplace.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board (Board) makes the following findings of fact and conclusions of law:

Claimant sustained a compensable injury on March 27, 2003. From December 11, 2003 to February 2, 2004, claimant's work activities were restricted. Included in these restrictions were, among other things, limitations on his neck movements and a specific directive not to drive or operate machinery.¹ It is undisputed that respondent was able to accommodate the restrictions within the workplace. Respondent did not, however, provide claimant with transportation to and from work.

Claimant maintains the treating physician's limitation on his driving gives rise to an obligation on the part of respondent to provide transportation to and from his job. At the preliminary hearing the ALJ considered this argument but denied claimant's request. He reasoned as follows:

"... the Act, I think, puts on the worker the obligation to get to and from work. That's - - the Act provides that the employee has the obligation to get to and from work, and the going and coming rule puts the burden on the employee to get themselves back and forth to work without the responsibility of the respondent. I'm unaware of any provision of the Act that imposes upon the respondent the obligation to provide transportation to and from work."²

An ALJ's preliminary order under K.S.A. 44-534a is not subject to review by the Board unless it is alleged that the ALJ exceeded his or her jurisdiction in granting the preliminary hearing benefits.³ Alternatively, "[a] finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board."⁴

The Board finds it does not have jurisdiction to address the pending issue. Whether an employer is compelled to provide transportation to an injured employee is not one of the jurisdictional issues delineated within K.S.A. 44-534a. Additionally, there is no allegation

¹ P.H. Trans., Ex. 1.

² P.H. Trans. at 8-9.

³ K.S.A. 2002 Supp. 44-551(b)(2)(A).

⁴ K.S.A. 44-534a(a)(2)(Furse 2000).

the ALJ exceeded his jurisdiction in denying claimant's request for transportation. Accordingly, the claimant's appeal must be dismissed.

WHEREFORE, it is the finding, decision and order of the Board that the claimant's appeal of the Order of Administrative Law Judge Bruce E. Moore dated February 13, 2004 is dismissed.

IT IS SO ORDERED.

Dated this _____ day of April, 2004.

BOARD MEMBER

c: Jeffrey E. King, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director